

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Shorter, Alabama))

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2004

Released: April 14, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Auburn Network, Inc. ("Petitioner") directed to the letter dated November 19, 2003, returning its Petition for Rule Making. H&H Communications, L.L.C. ("H&H Communications") filed an Opposition to the Petition for Reconsideration. Petitioner filed two Motions for Extension of Time to respond to H&H Communications' Opposition. For the reasons discussed below, we deny the Petition for Reconsideration.

Background

2. The Audio Division returned by letter a Petition for Rule Making requesting the allotment of Channel 228A to Shorter, Alabama, as the community's first local aural broadcast service. In order to accommodate the allotment at Shorter, the Petitioner proposed to reclassify the license of FM Station WJDC, Birmingham, Alabama to specify operation on Channel 229C0 in lieu of Channel 229C since the station is operating below the minimum Class C antenna height requirements of at least 451 meters height above average terrain.¹ We returned the Petition for Rule Making because it was unacceptable for consideration because the proposed site for Channel 228A at Shorter would be short-spaced to FM Station WJDC even as Class C0 facility.

Petition for Reconsideration

3. In its Petition for Reconsideration, the Petitioner requests that the letter action be reconsidered because the proposed allotment of Channel 228A at Shorter is not short-spaced to FM Station WDJC as a Class C0 facility. Specifically, Petitioner asserts that the actual tower location of FM Station WJDC is different from the site licensed by the Commission. In support of this contention, the Petitioner submitted an engineering statement stating that the actual reference coordinates for FM Station WJDC are 33-26-36 NL and 86-52-51 instead of 33-26-36 NL and 86-52-50 WL, which is the authorized site licensed by the Commission.

4. In response, H&H Communications, licensee of Station WQSI-FM, Union Springs, Alabama filed an Opposition to the Petition for Reconsideration. H&H Communications states that the Petition for

¹ See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21649 (2000), 47 C.F.R. § 1.420(g), n.2, and 47 C.F.R. § 73.3573, n.4.

Reconsideration is completely without merit. H&H Communications states that the Petitioner's conclusion is based upon the readout from a consumer grade GPS receiver obtained from an engineer hired by the Petitioner. H&H Communications notes that the Petitioner has not submitted an affidavit from the engineer establishing its credentials in the field of surveying, nor is there any discussion of the methodology used in measuring the location of the tower. With respect to this Opposition, we note that no reply was received from the Petitioner even though it filed two Motions for Extension of Time to respond to H&H Communications' Opposition.

Discussion

5. Section 1.429 of the Commission's rules sets forth the limited provisions under which the Commission will reconsider a rulemaking action. Reconsideration is warranted only if the Petitioner cites error of fact or law, or presents new facts or changed circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action. We recognize that the Petitioner has alleged new facts. However, the Commission's records show that the licensed site for FM Station WJDC is 33-26-36 NL and 86-52-50 WL. In this instance, Section 73.208 of the Commission's rules, requires that licensed sites must be used to determine minimum distance separation requirements when considering petitions to amend the FM Table of Allotments. On the basis of the record in this rulemaking proceeding, we will not ignore or change the licensed site for FM Station WJDC merely to bring this proposal into compliance with our minimum separation requirements.² In view of the above, we deny the Petition for Reconsideration in this proceeding.

6. Accordingly, IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by Auburn Network, Inc. IS DENIED.

7. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

² In the event the Petitioner continues to believe that FM Station WJDC is not operating at its licensed site, the appropriate forum to resolve this issue would be the Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, SW, Washington, DC 20554.